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OUR FILE NUMBER
677455-001

December 12, 2011

VIA ECF AND FACSIMILE

Honorable Cheryl L. Pollak
United States Magistrate Judge
United States District Court
United States Courthouse
225 Cadman Plaza East, Room 1230
Brooklyn, NY 11201-1818

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**Re: Zimmerman v. Poly Prep Country Day School,
USDC, EDNY Case No. 09 Civ. 4586 (FB)(CLP)**

Dear Judge Pollak:

We are in receipt of a letter filed by Plaintiffs on Sunday December 11, 2011, seeking leave to submit a further affidavit to supplement their discovery and fraud on the Court motions briefed in August and September of this year. For the reasons set forth at length in prior opposition briefing, these motions are meritless because they are predicated on distortions of the record and of the Poly Prep Defendants' position in this litigation, and because they rely on the untenable assertion that recollections in 2011 of events between thirty and forty years in the past amount to alleged willful perjury and fraud simply because Plaintiffs disagree with the testimony. The motions and even these recent letters submitted by Plaintiffs seeking to file further affidavits also improperly seek to litigate issues piecemeal, before there has been a responsive pleading, before Plaintiffs' claims have been tested for legal sufficiency, and in lieu of the role properly reserved for the jury. A further affidavit will not cure these defects.

Moreover, Plaintiffs describe their proposed further affidavit as concerning an alleged conversation between two non-parties, neither of whom is a party in this lawsuit, neither of whom has testified in this action, and neither of whose knowledge or recollection is at issue in Plaintiffs' discovery motions. For this additional reason, the Poly Prep Defendants respectfully ask that Plaintiffs' request for submissions be denied.

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Notwithstanding, should the Court permit supplemental filings, we respectfully request the opportunity to respond.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey I. Kohn", written over a horizontal line.

Jeffrey I. Kohn
of O'MELVENY & MYERS LLP

cc: Kevin T. Mulhearn, Esq.
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